IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.3214 of 1998
and
W.P.M.P.No.4791 of 1998

The Trichy District Co-operative
Milk Producers Union Ltd.,
Pudukottai Road,
Trichy-620 023,
rep. by its Managing Director. ... Petitioner

Vs.

1. The Presiding Officer,
   Labour Court,
   Trichy.

2. S. Mahaboob Shareef,
   C/o. President,
   Trichy District Co-operative
   Milk Producers Union,
   Thozhilalar Sangam,
   5-E/6 and 7, Fort Station Road,
   Tiruchirapalli-620 002. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records of the first respondent in its order dated 21.10.1997 made in C.P.No.66 of 1992 and to quash the same.

For Petitioner : Mr. R. Parthiban
For R2 : Mr. Hari paranthaman

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O R D E R

The petitioner management, who is the respondent in C.P.No.66 of 1992 has filed the present writ petition, challenging the award passed by the Labour Court, Trichy under Section 33(c)(2) of the Industrial Disputes Act. The second respondent in the writ petition, has filed the above C.P.No.66 of 1992, claiming a sum of Rs.25,370/- towards the arrears of salary.

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2. The second respondent has joined the service of the writ petitioner's Establishment and he has worked as a Dairy Boy between 01.01.1967 and 31.05.1991. Later on, he has been re-designated as the Mazdoor and he was receiving the Gross salary of Rs.756/-. As per the settlement entered into between the Management and the Workers, the petitioner is entitled for Selection Grade for the service rendered by him between 01.10.1984 and 31.05.1988. Accordingly, his salary has to be fixed for the said period at Rs.365.10-415. As per G.O.M.S.No.304, dated 01.06.1988, the petitioner is entitled for Special Grade at the pay scale of Rs. 975-1660. The petitioner has retired from service with effect from 30.05.1992. According to the petitioner, by calculating the amount due in accordance with the settlement, as well as the Government Order, he is entitled for the salary due to the extent of Rs.25,370/-.

3. The writ petitioner being the respondent in C.P.No.66 of 1992 has filed a counter affidavit, denying the various allegations. It is also the case of the respondent that the petition under Section 33(c)(2) is not maintainable. According to the respondent, it is a dispute regarding the confirmation of Special Grade and also Selection Grade under Industrial Disputes Act and the same can be resolved by Adjudication and not filing claim petition. However, the respondent in C.P.No.66 of 1992 has specifically admitted that there was a settlement under Section 12 (3) of the Industrial Disputes Act. On 07.11.1985, as per the settlement, a revision of pay was made, but the case of the respondent is that it was based on the said 12(3) settlement. The amount of salary was increased, based on which, the difference in salary has already been paid. Therefore, according to the respondent, there is no liability on the part of the employer to pay any further amount.

4. The Labour Court after analysing the evidence has held that as per Ex.P1 the settlement entered on 07.11.1985 under Section 12(3) of the Industrial Disputes Act, the petitioner in the C.P. is entitled for Selection Grade on completion of 10 years of service on 1977 and considering the same, Selection Grade has been confirmed for the petitioner from 01.10.1984 to 31.05.1988 and the amount due from the said date was quantified at Rs.7070/-.

5. Further, the Labour Court also considered G.O.M.S.No.304, which is marked as Ex.P.2, for the purpose of confirmation of Special Grade on the petitioner and after quantifying the amount due as per the Government Order and also as per 12(3) Settlement analysed the evidence in detail, and quantified the amount due to the petitioner as Rs.25,370/-. It is further relevant to point out that the Labour Court has also referred to Ex.R.8 filed on the side of the Management, which is Government order, namely

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G.O.M.S.No.304, wherein it is specifically stated that the employees in the scale of pay of Rs.750-945 and above are entitled to move on to the Selection Grade after completion of 10 years service in the ordinary grade and to the Special Grade after completion of 10 years in the Selection Grade.

6. The Labour Court has also taken into consideration the Statement of Accounts submitted on the side of the Management, namely the respondent in C.P. who has contented that the employees are entitled to salary only at the rate of Rs.3,736/-, after considering Exs.R2 and R8. After analysing the entire facts and circumstances of the case, the Labour Court has come to the conclusion that the petitioner is entitled to Special Grade and quantified the amount as Rs.25,370/- as stated above.

7. Aggrieved by the award passed by the Labour Court, the petitioner/employer has filed the writ petition contending inter-alia that the petitioner/employer has quantified the amount as per Section 12 (3) Settlement and also the Government Order referred to by the Labour Court and the quantum arrived at as per the calculation of the employer has been paid. If the employee is not satisfied on the basis of quantum arrived at, it is only open to him to raise the issue under the Industrial Disputes Act and not under Section 33(c)(2) of the Act.

8. On the other hand, it is the contention of the respondent that the calculation arrived at by the Labour Court was based on Government Order and also as per Section 12(3) settlement entered under Industrial Disputes Act. The confirmation of Selection Grade and consequential increase of salary is only automatic after completion of 10 years, which was originally 20 years and the same has been brought down under 12(3) settlement entered under the Industrial Disputes Act. Under such circumstances, the learned counsel for the second respondent/employee submitted that there was absolutely no dispute regarding the quantifying the amount.

9. I have considered the rival submissions of the counsel for the petitioner as well as the respondents and also perused the records.

10. This Court while admitting the writ petition, issued a direction on 11.09.1998 to the writ petitioner to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) with the Labour Court and also this Court by an order dated 11.09.1998 has directed the Labour Court to deposit the said amount in a fixed deposit in any nationalised bank and admittedly, the second respondent in the writ petition is permitted to receive the

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interest once in six months. The fixed deposit is still lying in the bank as deposited by the Labour Court. A reference of the order passed by the Labour Court under Section 33(c)(2) shows that the writ petitioner has admitted the presence of the 12(3) settlement and also applicability of the Government orders including G.O.M.S.No.304, dated 28.03.1990. The reference of these documents, namely Ex.P.1, which is 12(3) settlement and also Ex.R8, namely G.O.M.S.No.304 shows that the confirmation of Selection Grade as well as Special Grade to the petitioner is automatic after completion of 10 years respectively. It is not in dispute that the petitioner has completed the period of service as stated in the written statement and only the dispute that what is raised by the employee is the revision of pay. According to the employer, on calculation amount has been arrived at and the same has been paid as per the G.O. and 12(3) settlement. On the other hand, the employee would contend that as per 12(3) settlement, he is entitled for the revision of pay after confirmation of the Selection Grade and Special Grade, which is automatic after the lapse of ten years respectively. As per the 12(3) settlement, it is the differential salary by consequential revision that was sought to be recovered which does not require raising an Industrial Disputes and I am totally in agreement award passed by the Labour Court. That apart, as I have stated earlier referring to award passed by the Labour Court was after considering the entire facts and referring to various documents on quantifying the amount, inasmuch as the presence of 12(3) settlement is not in dispute, I do not think that the Industrial Disputes must be raised for the purpose of arriving at the amount due to the second respondent.

11. In view of the facts stated above, I do not think that the award passed by the first respondent/Labour Court deserves to be interfered with. Consequently, the writ petition fails and the same is dismissed. The second respondent shall be eligible to receive the amount of Rs.25,000/- deposited by the petitioner, in view of the award passed by the Labour Court under Section 12(3) of the Act. No costs. Consequently, C.M.P.No.4791 of 1998 is closed.

jrl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Presiding Officer,
Labour Court,
Trichy.

+ one cc to Mr. D. Hariparanthaman, Advocate sr no. 40854
+ one cc to Mr. R. Parthiban, Advocate sr no. 40929

AKM(CO)
NM(27.09.2006)

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